

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2018

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.2207 of 2010 and
M.P.No.1 of 2010

P.Palanisamy

... Appellant/1st Defendant

Vs

1.Smt.Devi
2.Mr.Ramesh

1st and 2nd Respondent /claimants

3.M/s.United India Insurance Company,
No.280, Ooty Main Road,
Mettupalayam.

...3rd Respondents/2nd Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen Compensation Act, 1948 against the order dated 14.05.2010 made in W.C.No.23 of 2007 on the file of the Workmen Compensation Tribunal, Deputy Commissioner of Labour at Coonoor.

For Appellant : Mr.Srinath Sridevan

For Respondents 1 & 2 : Mr.L.Mouli

For third respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order dated 14.05.2010 made in W.C.No.23 of 2007, on the file of the Workmen Compensation Tribunal, Deputy Commissioner of Labour at Coonoor, raising the following substantial questions of law:-

"a) Whether the Commissioner is justified in holding that the deceased Natarajan to be an employee of the Appellant, in the absence of any evidence substantiate the same ?

b)Whether the Commissioner was justified in relying upon the FIR Ex.A.2, without referring to the deposition of RW2, who had given the said FIR ?

c) Whether the Commissioner has correctly understood Ex.A3 Postmortem Report, in arriving at a finding that the death was not on account heard deceased ?

d)Whether Natarajan's death, which occurred on account of coronary occlusion, can be said to be the death arisen out of an accident in work place? "

2.The first respondent is the wife and the second respondent is the son of Mr.K.Natarajan/the deceased respectively. The case of the claimants/respondents 1 and 2 is that the deceased was working under the appellant as Loadman. The deceased belongs to Nilgiris district and he was working in the appellant transport service as an employee for more than 10 years. As a principal employer, who has engaged the deceased for loading and unloading the tea leaves to various parts of the country. Accordingly, on 26.04.2007, the deceased was while in the course of employment of unloading the tea leaves went to the top of the lorry bearing registration No.TN 40 B 6000 and while removing the roof tarpaulin, he fell down from the height of 20 feet and sustained severe injuries at W/Island, Subramanyam Road, Ernakulam, Kerala. Immediately, the deceased was rushed to the hospital and he was reported dead by the Doctors, due to the injuries sustained by him while he was removing the roof tarpaulin and while he was in the course of his employment under the appellant herein.

3.The case of the claimants/respondents 1 and 2 is that the deceased was earning a sum of Rs.3,200/- per month and the age of the deceased was 46 years and the deceased was the sole bread winner of the family and hence, they filed a claim application claiming a sum of Rs.2,11,120/- as compensation before the Workmen Compensation Tribunal/Deputy Commissioner of Labour at Coonoor under Section 10(1) of the Workmen Compensation Act, 1923.

4.The claimants/respondents 1 and 2 have also marked six documents at the time of filing the claim petition in support of their claim. A counter was filed by the appellant herein before the Deputy Commissioner of Labour, stating that the said deceased Mr.Natarajan was not a workman under the appellant. The

appellant herein further denied the statement made by the claimants that the deceased was all along working under the appellant. In the counter affidavit, the appellant herein would further submit that there was no Master and Servant relationship between him and the deceased. The appellant herein further contended that, on the crucial date i.e., on 26.04.2007, he has not engaged Mr.Natarajan, the deceased for loading and unloading the tea leaves which was originally taken to Kerala from Coonoor. He further denies the statement made by the claimants that the deceased was engaged by the appellant herein for loading and unloading the tea leaves and while doing so and while removing the tarpaulin at the roof of the said lorry at 20 feet height, the deceased fell down and sustained injuries and because of the injuries which occurred during his employment under the appellant only he died and hence, according to the appellant the claimants are not entitled for compensation to be paid by the appellant herein. The appellant further contended that without prejudice, the compensation claimed by the claimants is excessive and the monthly income of the deceased as claimed by the claimants is not true and if the Court comes to the conclusion that the claimants are entitled for compensation, he is not liable to pay the same and the burden will lie on the third respondent, Insurance Company.

5.The third respondent Insurance Company refuting the claim application has submitted that since, the appellant herein has disputed the claim made by the claimants/respondents 1 and 2 and has refused to accept the Master and Servant relationship between the appellant and the deceased, the third respondent Insurance Company who is the Insurer of the Lorry owned by the appellant, is not liable to pay any amount as compensation to the claimants. The Insurance Company further contended that the claimants had stopped any level for unlawful gain.

6.The appellant herein submitted before the Deputy Commissioner of Labour at Coonoor that the deceased died out of heart attack and not due to the injuries sustained on 26.04.2007. The appellant would further submit that the son of the deceased viz., the second respondent/second claimant is well employed and earning good salary and hence, the claimants are not the dependents of the deceased, as claimed by them. In view of the aforesaid contentions, the appellant and the third respondent Insurance Company herein sought for dismissal of the claim petition, filed by the claimants.

7.The Deputy Commissioner of Labour at Coonoor, after considering the materials on record and based on the evidence, has come to the conclusion that the deceased was an employee under the appellant. The appellant is the owner of the Lorry bearing registration No.TN 40B 6000 and the said Lorry is

covered under the policy No.170102/31/06/01/0001201 from 13.05.2006 to 12.05.2007 and hence, the appellant is liable to pay a sum of Rs.2,68,564/- as compensation and failure to deposit the same, 12% interest will be awarded. While ordering compensation to be paid by the appellant herein, the Tribunal has considered the claim of the third respondent Insurance company that since, the said Policy was taken by the earlier owner of the Lorry and not by the appellant herein and the policy was also not transferred to the name of the appellant, the Insurance company is not liable to pay compensation amount to the claimants. Hence, the tribunal foisted the burden on the appellant to pay compensation to the claimants.

8.As against the said order of the Deputy Commissioner of Labour at Coonoor, the appellant is before this Court with this Civil Miscellaneous Appeal raising the ground that the conclusion arrived at by the Deputy Commissioner of Labour at Coonoor that the deceased Mr.Natarajan was an employee of the appellant, is not based on any evidence and the appellant has also submitted that the Lorry was carrying tea leaves and the Lorry is covered by policy and the said lorry belongs to him. According to the appellant the Deputy Commissioner of Labour at Coonoor has erroneously come to the conclusion that the deceased was his employee and there is no proof produced to show that the said Mr.Natarajan was an employee working under the appellant. The appellant would further submit that the Deputy Commissioner of Labour at Coonoor has wrongly come to the conclusion that the deceased was a Lorry Driver. Nowhere in the F.I.R., it has been stated that Mr.Natarajan was an employee under the appellant and was the Driver of the said Lorry. The appellant further contended that before the Deputy Commissioner he has never stated that the deceased was neither Driver; nor Cleaner of Lorry bearing registration No.TN 40B 6000; nor employee of the appellant. In the absence of any proof, the Deputy Commissioner of Labour at Coonoor ought not to have come to the conclusion that the said deceased person was an employee under the appellant.

9.The Deputy Commissioner of Labour at Coonoor has come to the conclusion that there is nothing in the post mortem regarding heart attack on the contrary the post mortem which has been marked as Ex.A.3 specifically stated that the deceased died due to the injuries suffered and the findings are consistent with the same and therefore, it is clear that the deceased has not suffered very severe heart attack as claimed by the appellant and the death was due to the multiple severe injuries caused during the fall on the top of the lorry bearing registration No.TN 40B 6000.

10. In the cross examination of the appellant, the lorry owner, it is to be seen that he has admitted that the Driver is one Mr. Mani and there was no Cleaner. But he admitted that on 26.04.2007, the lorry was at Ernakulam and the said Mr. Natarajan was found dead in the said lorry was not known to him and he has admitted that the Driver Mr. Mani had informed him that one Mr. Natarajan died due to heart attack. The Driver Mr. Mani was not examined. The said Driver Mr. Mani at the time of police enquiry had submitted that he is only a Cleaner and Driver is Mr. Natarajan. Ex.B.1 is the policy that policy stands in the name of one Mr. Annamalai. But after purchasing the lorry three years earlier to the date of incident, the said R.W.1/the appellant herein has not changed the name of the ownership and also not changed the policy to his name and hence, the said policy stands in the name of Mr. Annamalai, as on the alleged date and the submission of the appellant that he has paid the insurance amount has not been proved by producing any evidence. He denies such accident and as per policy, the Driver alone is entitled for compensation is not known to the appellant.

11. From the evidence, it could be seen that a statement made by the appellant in evidence is contrary to the F.I.R. In the F.I.R., it has been stated by the said Driver Mr. Mani that the deceased was working under the appellant but at the time of his cross examination, he denies that the said deceased person was working under the appellant. He would further submit that he was waiting there to travel from Ernakulam to Ooty. However, the said statement was not proved by any evidence.

12. In the F.I.R., it has been stated that Mr. Natarajan was a Driver of the Lorry bearing registration No. TN 40B 6000 and while loading tea leaves at Ernakulam and while removing the tarpaulin, the deceased fell down and succumbed to injuries. Based on the information given by one Mr. Saji, son of Mr. Mani, the said F.I.R., was registered. Mr. Saji, informed the above incident to the Station Incharge, Harbour Police station, on 26.07.2007 at 9.30 am. The said Mr. Saji has stated that while he was entering the door steps of the office room, someone from IAL Company shouted saying that somebody is lying on top of the lorry. So they all climbed on top of the lorry, where they saw a person lying on top of the tarpaulin. Immediately, Mr. Saji took some water from the lorry cabin and gave him two sips. Then they took him to the Island Port Trust hospital. The Doctor who attended him told that he was dead. Since, Mr. Saji had no connection with the loading section, he don't know who he was and immediately, they called Mr. Mani, Cleaner and he only explained that the deceased name was Mr. Natarajan and while removing tarpaulin and rope, he fell unknowingly before the another vehicle bearing registration No. TDB 9762 which was parked. The distance between the accident place and the police

station was ½ a kilometer towards west.

13.From the above, it is clear that the person while on duty in the course of his employment, had died. The Insurance company has submitted that it is not liable to pay any amount as compensation to the claimants as the policy does not stand in the name of appellant instead, it stands in the name of Mr.Annamalai and the policy has not been transferred to the appellant. Hence, the Insurance company is not liable to pay any amount to the claimants as compensation.

14.Admittedly, the appellant is not a policy holder. Hence, the Insurance Company is not liable to pay any amount to the deceased family. The said policy for the Lorry bearing registration No.TN 40B 6000 stands in the name of Mr.Annamalai and at the time of death of the deceased, the policy stands in the name of Mr.Annamalai then there is no relationship between the parties. Therefore, the compensation amount was directed to be paid by the appellant herein to the deceased family and accordingly, the appellant was directed to pay Rs.2,68,564/- to the claimants/respondents 1 and 2 as compensation.

15.In support of their case, the learned counsel for the third respondent produced a judgment of this Court in The Oriental Insurance Co. Ltd., v. Saraswathi (C.M.A.No.561 of 2001 dated 22.02.2008) and pointed out that when there was no direct evidence that while discharging his duties, the deceased fell down and succumbed to the injuries, the claimants are not entitled for compensation and accordingly, set aside the order passed by the Commissioner of Workmen's Compensation Act. Relying on the said judgment of this Court, the learned counsel for the appellant prays this Court to set aside the compensation award passed by the Deputy Commissioner of Labour.

16.It could be seen from the records that the said case relied on by the learned counsel for the appellant has got no application to the facts of the present case. It is clear from evidence that the deceased in this case died during his employment under the appellant herein. Hence, the claimants who are the legal heirs of the deceased claimed compensation before the Deputy Commissioner. When there is no contra evidence regarding the nature of death of the deceased when the Doctor clearly states that the person was lying on the lorry and when he was taken to the hospital, he was found dead already. It would show that while loading the tea leaves and for that purpose, while removing the rope and tarpaulin, the deceased succumbed to injuries.

17.The learned counsel for the respondents 1 and 2/claimants submitted that usually, the green tea leaves will be

collected in day times and it will be taken to the factories during night hours. After loading the same, the same will be taken to Kerala and out of such course of employment, the deceased had suffered an accidental fall and injury and died due to the same. Hence, the claimants/respondents 1 and 2 are entitled for compensation and they wanted to sustain the order of the Deputy Commissioner of Labour at Coonoor.

18. When there is no contra evidence produced by the appellant that the injuries sustained by the deceased who died were not caused during the course of employment and it is proved that the deceased was doing the work of loading green tea leaves and which was transported from Nilgiris to Kerala and the same only proved that there is a connection between the deceased and his employment and only during such working hours, he succumbed to injuries. The Deputy Commissioner of Labour Court, Workmen Compensation, Coonoor has rightly considered the evidence and has come to the conclusion that the claimants/respondents 1 and 2 are entitled for compensation and the same has to be paid only by the appellant herein.

19. This Court finds that the said order of the Commissioner is just and reasonable and there is ample evidence produced by the claimants/respondents 1 and 2 that only during the course of employment, the deceased died. In the absence of any contra evidence, this Court has also come to the conclusion that the order of the lower Court to uphold.

20. In view of all the above, the Civil Miscellaneous Appeal is dismissed thereby confirming the order passed by the Deputy Commissioner of Labour Court, Workmen Compensation, Coonoor in W.C.No.23 of 2007 dated 14.05.2010. No costs. Consequently, connected miscellaneous petition is closed.

Sd/--

Assistant Registrar(CS viii)

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Sub Assistant Registrar

jbm

To,

1. The Registrar,

Deputy Commissioner of Labour,

Workman's Compensation Tribunal, Coonoor.

+1cc to Mr.Srinath Sridevan , Advocate SR.No. 68526

+1cc to Mr.L.Mouli, Advocate SR.No. 67956

C.M.A.No.2207 OF 2010

ppa (co)

A.SK(10/04/2019)